

April 29, 1998

D.T.E. 98-29

Petition of Western Massachusetts Electric Company requesting approval by the Department of Telecommunications and Energy of First Mortgage Bonds in connection with certain nuclear fuel financing arrangements.

APPEARANCES: Jane P. Seidl, Esq.
Western Massachusetts Electric Company
c/o Northeast Utilities Service Company
P.O. Box 270
Hartford, Connecticut 06141

-and-

Stephen Klionsky, Esq.
260 Franklin Street
Boston, Massachusetts 02110

FOR: WESTERN MASSACHUSETTS ELECTRIC
COMPANY
Petitioner

I. INTRODUCTION

In Western Massachusetts Electric Company, D.P.U. 873 (1981), the Department of Public Utilities, now the Department of Telecommunications and Energy ("Department"), approved the participation of Western Massachusetts Electric Company ("WMECo" or "Company") in the Niantic Bay Fuel Trust (the "Trust") which is intended to facilitate the financing requirements for the purchase of nuclear fuel for Millstone Units Nos. 1, 2 and 3. The Trust uses proceeds of credit financing arrangements to obtain nuclear fuel and leases the fuel to the participants. Western Massachusetts Electric Company, D.P.U. 873, at 4-7 (1981). In Western Massachusetts Electric Company, D.P.U. 91-129 (1991), the Department approved an amendment to the Trust that included, among other things, a revolving credit agreement ("Credit Agreement") with a syndicate of banks. Most recently, the Department approved the Company's request to amend the Credit Agreement ("Amended Credit Agreement") which, among other things, required WMECo to issue no less than \$17,100,000 in first mortgage bonds in order to provide additional collateral to secure WMECo's pro rata share of credit. Western Massachusetts Electric Company, D.T.E. 97-108 (1998). The issuance of these bonds is the subject of this proceeding.

On March 23, 1998, WMECo filed an application with the Department for approval to issue \$17,300,000 in aggregate principal amount of First Mortgage Bonds, 1998 Series A ("First Mortgage Bonds") as additional collateral as required by the Amended Credit Agreement approved in D.T.E. 97-108. The Company proposes to issue the First Mortgage Bonds on or before May 1, 1998. The Company's petition was docketed as D.T.E. 98-29.

Pursuant to notice duly issued, a hearing was held at the Department's offices in Boston on April 14, 1998. There were no petitions for leave to intervene filed. At the hearing, the Company sponsored the testimony of David R. McHale, assistant treasurer of finance of WMECo. The evidentiary record consists of seven Company exhibits, eleven Department exhibits, and five Company responses to Department record requests.

II. DESCRIPTION OF THE PROPOSED FINANCING

The Company proposed to issue, on or before May 1, 1998, an aggregate principal amount of \$17,300,000 of First Mortgage Bonds with an interest rate not to exceed 6.89 percent and a maturity date of June 1, 1999 (Exhs. WM-5, at 4; WM-6, at 3, 5; Tr. at 15, 17). The Company stated that the First Mortgage Bonds will permit the Trust to continue to finance its purchase of nuclear fuel (Exh. WM-7, at 9). The Company stated that the First Mortgage Bonds are contingent obligations and that WMECo will have no payment requirement unless the Company does not pay the underlying debt related to WMECo's nuclear fuel financing arrangement (Exhs. WM-1, at 7; WM-7, at 9).¹ The Company stated that the First Mortgage Bonds will be issued under and secured by the First Mortgage Indenture and Deed of Trust dated August 1, 1954, between the Company and State Street Bank Company, Successor Trustee (Exh. WM-7, at 6). The Company stated that the First Mortgage Bonds will rank equally with all other first mortgage bonds of WMECo (id.).

¹The Company noted that the First Mortgage Bonds will have no effect on the Company's regulatory books of accounts because they are not considered to be outstanding (RR-DTE-5). The Company added that these bonds would be recorded on WMECo's regulatory books of accounts should WMECo fail to meet its obligations under the Amended Credit Agreement (id.).

The Company added that the First Mortgage Bonds are its best alternative because WMECo's current financial condition is such that the banks' willingness to continue to offer nuclear fuel financing was dependent upon the availability of additional security (Exh. WM-1, at 8).²

III. STANDARD OF REVIEW

In order for the Department to approve the issuance of stock, bonds, coupon notes, or other types of long-term indebtedness³ by an electric or gas company, the Department must determine that the proposed issuance meets two tests. First, the Department must assess whether the proposed issuance is reasonably necessary to accomplish some legitimate purpose in meeting a company's service obligations, pursuant to G.L. c. 164, § 14. Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 395 Mass. 836, 842 (1985) ("Fitchburg II"), citing Fitchburg Gas & Electric Light Company v. Department of Public Utilities, 394 Mass. 671, 678 (1985) ("Fitchburg I"). Second, the Department must determine whether the Company has met the net plant test.⁴ Colonial Gas Company, D.P.U. 84-96 (1984).

The Court has found that, for the purposes of G.L. c. 164, § 14, "reasonably necessary" means "reasonably necessary for the accomplishment of some purpose having to do with the obligations of the company to the public and its ability to carry out those obligations with the greatest possible efficiency." Fitchburg II at 836, citing Lowell Gas Light Company v.

²WMECo stated that the nuclear fuel is also used as collateral for the financing of the Trust (RR-DTE-3).

³ Long-term refers to periods of more than one year after the date of issuance. G.L. c. 164, § 14.

⁴ The net plant test is derived from G.L. c. 164, § 16.

Department of Public Utilities, 319 Mass. 46, 52 (1946). In cases where no issue exists about the reasonableness of management decisions regarding the requested financing, the Department limits its Section 14 review to the facial reasonableness of the purpose to which the proceeds of the proposed issuance will be put. Canal Electric Company, et al., D.P.U. 84-152, at 20 (1984); see, e.g., Colonial Gas Company, D.P.U. 90-50, at 6 (1990).

The Fitchburg I and II and Lowell Gas cases also established that the burden of proving that an issuance is reasonably necessary rests with the company proposing the issuance, and that the Department's authority to review a proposed issuance "is not limited to a 'perfunctory review.'" Fitchburg I at 678; Fitchburg II at 842, citing Lowell Gas at 52. Regarding the net plant test, a company is required to present evidence that its net utility plant (original cost of capitalizable plant, less accumulated depreciation) equals or exceeds its total capitalization (the sum of its long-term debt and its preferred and common stock outstanding) and will continue to do so following the proposed issuance. Colonial Gas Company, D.P.U. 84-96, at 5 (1984).

Where issues concerning the prudence of the Company's capital financing have not been raised or adjudicated in a proceeding, the Department's decision in such a case does not represent a determination that any specific project is economically beneficial to a company or to its customers. In such circumstances, the Department's determination in its Order may not in any way be construed as ruling on the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing. See, e.g., Boston Gas Company, D.P.U. 95-66, at 7 (1995).

IV. CAPITAL STRUCTURE OF THE COMPANY

The Company stated that it meets the net plant test but that the test may not apply in this proceeding because WMECo would have to make no payments under the First Mortgage Bonds unless the Company fails to meet its obligations under the Amended Credit Agreement (Exh. WM-7, at 8). As of December 31, 1997, the Company's utility plant was \$1,284,288,000 (RR-DTE-4). The accumulated depreciation against this plant was \$559,119,000 (id.). As of December 31, 1997, the Company's total capitalization was \$575,727,000 (id.). The Company reported total common stock and paid-in surplus of \$174,925,000, preferred stock of \$41,000,000 and total long-term debt of \$359,802,000 (id.).

Thus, as of December 31, 1997, the Company has net utility plant in service of \$725,169,000 (\$1,284,288,000 - \$559,119,000) and excess of net utility plant over outstanding capital of \$149,442,000 (\$725,169,000 - \$575,727,000) (RR-DPU-1, at 2; RR-DPU-4). Inclusion of the proposed issuance of \$17,300,000 in first mortgage bonds results in excess net utility plant of \$132,142,000 (\$149,442,000 - \$17,300,000).

V. ANALYSIS AND FINDINGS

Based on the foregoing, the Department finds that the proposed issuance of \$17,300,000 of first mortgage bonds to be issued during the period from the date of this Order through June 1, 1999, and bearing an interest rate not to exceed 6.89 percent is reasonably necessary to accomplish a legitimate purpose in meeting the Company's service obligations in accordance with G.L. c. 164, § 14.

The Department finds that the Company's proposed issuance of First Mortgage Bonds meets the net plant test, since the Company's net plant exceeds its total capital stock and long-

term debt by \$132,142,000.⁵ Issues concerning the prudence of the Company's capital financing have not been raised in this proceeding, and the Department's decision in this case does not represent a determination that any project is economically beneficial to the Company or its customers. The Department's determination in this Order is not in any way to be construed as a ruling relative to the appropriate ratemaking treatment to be accorded any costs associated with the proposed financing.

Finally, the Department notes its concern with any negative effect financings may have on a company's restructuring initiatives. The type and specific structure of a company's financing affects its obligation to its shareholders and bondholders as well as its credit rating. Such obligations and corporate financial health may dictate to some extent the corporate structure and thus may hinder the company from choosing a revised corporate structure such as the divestiture or even the functional separation of generation assets. The Department notes that WMECo stated that the instant financing would not affect the Company's current or future plans to restructure, including its ability to divest its generating assets (Exh. DTE-3).

V. ORDER

Accordingly, after due notice, hearing and consideration, the Department

VOTES: That the issuance by Western Massachusetts Electric Company of First Mortgage Bonds in the aggregate principal amount of \$17,300,000 at an interest rate not to

⁵While the Company stated that the net plant test may not apply in this proceeding, a company asking the Department to approve an issue of new stock, bonds or other securities should be able to demonstrate that the proposed issuance meets the net plant test. Colonial Gas Company, D.P.U. 84-96, at 8 (1984); see also G.L. c. 164, § 16.

exceed 6.89 percent, is reasonably necessary for the purpose for which such issues have been authorized; and it is

ORDERED: That the Department hereby approves and authorizes the issuance by Western Massachusetts Electric Company of First Mortgage Bonds with a maturity date of June 1, 1999 in the aggregate principal amount of \$17,300,000, at an interest rate not to exceed 6.89 percent, no earlier than May 1, 1998; and it is

FURTHER ORDERED: That the First Mortgage Bonds approved in this Order shall be used for the purposes as set forth herein; and it is

FURTHER ORDERED : That the Secretary of the Department shall within three days of the issuance of this Order cause a certified copy of it to be filed with the Secretary of the Commonwealth.

By Order of the Department,

Janet Gail Besser, Chair

John D. Patrone, Commissioner

James Connelly, Commissioner

W. Robert Keating, Commissioner

Paul B. Vasington, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).